

Confidential - Subject to The Protective Order
Richard Markowitz - April 8, 2021

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
5)
6 CUSTOMS AND TAX ADMINISTRATION OF)
7 THE KINGDOM OF DENMARK)
8 (SKATTEFORVALTNINGEN) TAX REFUND)
9 SCHEME LITIGATION)
10))
11 This document relates to case nos.)
12 19-cv-01783; 19-cv-01788; 19-cv-01794;)
13 19-cv-01798; 19-cv-01918)
14))
15))

16 C O N F I D E N T I A L
17 SUBJECT TO THE PROTECTIVE ORDER
18
19
20

21 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
22 EXAMINATION OF
23 RICHARD MARKOWITZ
24 DATE: April 8, 2021
25

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 R I C H A R D M A R K O W I T Z ,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:

4

5

6

7 EXAMINATION BY MR. WEINSTEIN:

8 Q Good morning, Mr. Markowitz.

[REDACTED]

25

Q Mr. Markowitz, my name is Marc

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1 advisor.

2 Q Was he based in Europe or the
3 United States?

4 MR. BONGIORNO: Object to the form.

5 Q Where was he based?

6 A He lived in and worked from Canada.

7 Q Who were the principals of Argre
8 Management?

9 A Myself, Matthew Stein, Jerome
10 Lhote, and John Van Merkensteijn.

11 Q Did the four of you have equal
12 interests in the company?

13 A Can you clarify that as to time
14 frame?

15 Q When Argre was founded, were each
16 of you principals in the company?

17 A I'm sorry, did you say, were each
18 of us principals in the company at the time
19 of its founding?

20 Q Yes.

21 A Yes, we were.

22 Q And did you each have a 25 percent
23 interest?

24 A Not at its founding.

25 Q What was the split at its founding?

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1 And ultimately they didn't find you
2 another leverage provider?

3 MR. BONGIORNO: Objection.

4 A I disagree with the premise of your
5 question.

6 Q Okay. Ultimately, were they able
7 to provide -- to find another leverage
8 provider?

9 A No.

10 Q Can you turn, please, to
11 Exhibit 2116?

12 MR. WEINSTEIN: Mark this as 2116.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 MR. BONGIORNO: Marc, maybe after
16 you finish with this one, we can take
17 our next break?

18 MR. WEINSTEIN: Yeah.

19 Q So Mr. Shah sends you an e-mail in
20 April of 2012 asking if you have a pension
21 fund in the U.S. that can be used for trading
22 equities and derivatives.

23 Do you recall receiving that from
24 him?

25 A Yes.

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1 Q At the time that you got it, did
2 you have a pension fund in the U.S. that
3 could be used for trading equities and
4 derivatives?

5 A I don't recall.

6 Q Okay. Did you understand that this
7 question was in the context of dividend --
8 the dividend arbitrage strategy?

9 A Yes.

10 Q Do you recall what your response
11 was to Mr. Shah?

12 A No.

13 Q Did you end up setting up a pension
14 fund in the U.S. to be used for trading
15 equities or derivatives as part of a dividend
16 arbitrage strategy?

17 A Yes.

18 Q Okay. And what pension plans did
19 you set up to be used for that purpose?

20 A RJM Capital Pension Plan, among
21 others.

22 Q When was RJM Capital Pension Plan
23 established?

24 A Sometime in 2013.

25 Q Okay. Did -- along with your

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1 fellow principals at Argre, did you establish
2 a pension plan in response to Mr. Shah's
3 question of whether you had one to trade
4 equities and derivatives?

5 MR. BONGIORNO: Objection.

6 A Yes.

7 Q Was that the Michelle Pension Plan?

8 A Yes.

9 Q Do you recall when that was
10 established?

11 A Sometime in 2012.

12 Q Okay. It's shortly after -- well,
13 withdrawn.

14 Did you and the Argre principals
15 establish any other pension plans in 2012 for
16 the same purpose?

17 A Yes.

18 Q Which pension plans did you
19 establish?

20 A Xiphias Pension Plan.

21 Q Any others?

22 A Remece Pension Plan or Remece
23 Investments Pension Plan.

24 Q Any others?

25 A Could you clarify what time frame

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1 A Back in April of 2012, following
2 the e-mail you mentioned, we had a call with
3 Solo in which we learned that they were
4 becoming a custodian, and terms of trades and
5 liquidity in the market and pricing in the
6 market was explained to us at that time.

7 And that included a share between
8 the seller and the buyer.

9 Q Okay. Were you part of that
10 discussion that you just described happened
11 with Mr. Shah?

12 A Yes.

13 Q Where did that take place?

14 A A telephone discussion.

15 Q Okay. Who was a participant?

16 A I was on the call, one or more of
17 my partners may have been on the call, and
18 representatives of Solo Capital were on the
19 call.

20 Q Okay. And during that call, the
21 Solo people said that they were becoming a
22 custodian?

23 A That they had become a custodian.

24 Q Okay. And so we saw a bunch of
25 e-mails earlier where they were trying to get

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1 other financial institutions to serve as
2 custodian.

3 Did they not get any that would
4 serve in that role?

5 A I don't know.

6 Q Okay. But it turned out that when
7 the dividend arbitrage trading began with
8 Denmark, it was going to be Solo Capital who
9 was the custodian for the trading?

10 A The discussions we had with Solo
11 initially were that the trading would be in
12 Belgium and those were the trades we did
13 initially.

14 Q Okay. And for the Belgian trades
15 initially, Solo Capital was going to be the
16 custodian?

17 A Yes.

18 Q And then, as we see in August of
19 2012, this plan started trading in Denmark.

20 Was Solo Capital --

21 A Yes.

22 Q Was Solo Capital the custodian as
23 well?

24 A Yes.

25 Q Okay. So tell me,

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1 what -- withdrawn.

2 What did the Solo folks tell you on
3 that phone call about how the trading would
4 work and the counterparties?

5 A They said that Solo had worked to
6 get approvals from the British regulators to
7 become a custodian, that they had hired legal
8 and compliance staff, securities finance
9 people, and that with customers who became
10 clients of Solo as a custodian, they would be
11 able to purchase shares from -- through
12 brokers, from the market, for other sellers
13 of the shares, and hedge those transactions
14 through their accounts at Solo for futures
15 contracts and, if needed, lend shares to a
16 borrower who would post collateral pursuant
17 to a standard stock lending agreement.

18 Q Okay. You mentioned earlier
19 that -- something about that there would be
20 negotiations with the sellers of the shares
21 about terms such as price and settlement
22 date.

23 What did they tell you on that
24 phone call about that?

25 A That the pricing -- market pricing

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1 brokers were going to go find the liquidity
2 for these trades in the marketplace?

3 A From sellers of shares.

4 Q Okay. Where did you expect they
5 were going to find these sellers?

6 A In all the dividend arbitrage
7 strategies we had looked at and participated
8 in, that was up to the brokers to find that
9 liquidity, given the economics of the trade
10 and the advantage of dividend arbitrage.

11 As I said, profitability could be
12 shared. The sellers could have been other
13 investors who were not entitled to the tax
14 benefits. They could have been short
15 sellers, long sellers.

16 So the source of the stock was up
17 to the brokers and the sellers to obtain
18 based on market liquidity.

19 Q Okay. And was it your
20 understanding that the sellers in each case
21 would be executing on the Solo platform?

22 A We were informed by Solo that other
23 counterparty to the trade would likely be
24 customers of Solo as well.

25 Q Okay. And is that -- that's true

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1 for the sellers of the shares?
2 A Yes.
3 Q Okay. And so was it your
4 understanding that the sellers of the shares
5 were going to be customers of Solo?

6 A Yes.
7 Q Was that also true for the forward
8 or future counterparties?

9 A Yes and no.
10 Q Yeah, let me withdraw that.
11 Was that going to be true with
12 respect to the forward counterparties?

13 A Yes.
14 Q Okay. Was that also going to be
15 true with respect to the stock lending
16 counterparties?

17 A Yes.
18 Q Okay. And so, when you say the
19 brokers were going to go out into the market,
20 the market that they were going to go into
21 was the Solo customer list.

22 Correct?
23 A Again, they could have gone to the
24 Solo customers or other customers if they
25 wanted to. There was no limit placed.

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1 MR. BONGIORNO: Thank you.

2 Q Who brought Aquila (Cayman) to the
3 table here?

4 A Solo Capital.

5 Q And do you have any idea how
6 Aquila (Cayman) came up with 333 million
7 kroner to give to the fund in exchange for
8 borrowing the shares?

9 A I don't know how they funded their
10 business one way or the other.

11 Q Any idea what their capital was at
12 Aquila (Cayman)?

13 A No.

14 MR. WEINSTEIN: All right. Why
15 don't we take the break?

16 THE VIDEOGRAPHER: Stand by. The
17 time is 3:13 p.m. and we're going off
18 the record.

19 (Brief recess taken.)

20 THE VIDEOGRAPHER: Stand by. The
21 time is 3:22 p.m. and we're back on
22 record.

23 Q Mr. Markowitz, with respect to the
24 Danish trading and the filing of reclaims
25 with Denmark, did you participate in the

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1 plan get the seller his or her 50 percent
2 profit on the deal?

3 A Again, the plan didn't pay the
4 money to the seller. The plan paid the money
5 or a fee, as was previously negotiated, to a
6 company called Ganymede Investments, I
7 believe, and would have received an invoice
8 for that.

9 And it was up to Ganymede to
10 distribute those funds, if needed, to other
11 counterparties.

12 Q What was Ganymede?

13 A A company.

14 Q Okay. Was it a company that you
15 had ever heard of prior to starting this
16 dividend arbitrage trading strategy with Solo
17 Capital?

18 A No.

19 Q Okay. Did you do any due diligence
20 on Ganymede prior to doing any transactions
21 with it?

22 A Patriot Act, AML, and basic
23 information on the owners of the company.

24 Q Okay. What information did you
25 obtain on the owners of the company,

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1 Ganymede?

2 A I believe it was owned by Sanjay
3 Shah.

4 Q Okay. And so Mr. Shah told you
5 that?

6 A We might have received corporate
7 documents that -- from wherever the company
8 was incorporated that showed that.

9 Q Okay. Do you know if you actually
10 did that, or did you just hear from Mr. Shah
11 that he owned it?

12 A I don't recall which one it was at
13 this point.

14 Q Okay. What -- did Ganymede provide
15 services to any of the pension plans that you
16 were affiliated with?

17 A The services would have been
18 assistance in the overall transaction, I
19 think, from our perspective, as I explained,
20 the amount of sharing of profit from the
21 trades and fees to Solo, similar to the
22 Merrill Lynch trade. Those would be paid to
23 an entity designated by Solo.

24 And they designated Ganymede, and
25 it was up to that entity and Solo to decide

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1 how those fees would be parceled out. But it
2 was part of the overall construction of the
3 trade.

4 Q Okay. Other than facilitating
5 getting the money to the right places, did
6 Ganymede, the entity, provide services to the
7 pension plans?

8 A I viewed Ganymede and Solo and
9 Sanjay Shah as one entity. So yes, in my
10 belief, there were significant services
11 provided in developing and becoming a
12 custodian at Solo Capital, and hiring all the
13 staff necessary to allow the custodian to
14 function, and to allow our pension plans or
15 other pension plans to execute these trades.

16 Q Okay. So you viewed Solo Capital
17 and Ganymede as interchangeable?

18 A Yes.

19 Q Okay. And do you -- did you have
20 an understanding as to why you got an
21 instruction from Mr. Shah to use the Ganymede
22 entity on certain occasions as opposed to the
23 Solo Capital entity?

24 A No.

25 Q Okay. Solo Capital had operations

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1 to this agreement, you were agreeing to pay
2 Ganymede 66.67 percent -- I'm not even sure I
3 said that right.

4 Pursuant to this agreement, you
5 were agreeing to pay Ganymede 66.67 percent
6 of that refund amount that's in the schedule,
7 but minus the Acupay fee.

8 Correct?

9 A My understanding was that the
10 pension plan was entitled to 50 percent, the
11 other 50 to the seller, and we would pay to
12 Solo or its designee a 34 percent fee similar
13 to the arrangements we had at Broadgate.

14 The net result to the pension plan
15 is to retain approximately 34 percent of the
16 reclaim. That's our understanding of any
17 fees that were paid.

18 It starts with a 50/50 split with
19 the seller.

20 Q Okay. I'm just asking what -- what
21 this agreement says. And the agreement that
22 you signed with Ganymede was that the plan
23 would pay Ganymede 66.67 percent of that
24 refund amount in schedule -- in the schedule,
25 except that deducted from that refund amount

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1 A Yes.

2 Q Do you recall which brokers were
3 used for Danish trading?

4 A One was the e-mail we were
5 previously looking at, FGC Securities.

6 Q Okay.

7 A I recall another name, Novus
8 Capital, and there were probably one, two, or
9 three more that I don't recall their names at
10 this point.

11 Q Okay. Were you familiar with Novus
12 Capital prior to doing trading with Solo
13 Capital?

14 A No.

15 Q Who introduced Novus as a broker?

16 A Solo.

17 Q Did you perform any due diligence
18 on Novus other than to obtain DML or Patriot
19 Act certificates?

20 A No. It wouldn't have been our --
21 it wouldn't have been something we would have
22 done to deal with a broker that was
23 intermediating trades for us.

24 Q Prior to using any brokers for the
25 purposes of this Danish trading, were you

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1 familiar with any of them that acted in that
2 role?

3 A Yes.

4 Q Which ones were you familiar with
5 prior to dealing with Solo?

6 A We had met one or two when we made
7 our first due diligence trip to London in
8 2010. In addition to meeting Merrill Lynch
9 and Acupay, we met one or more institutional
10 dealer -- institutional brokers.

11 And the names I don't recall at
12 this point, but we met at least two of them
13 at that trip.

14 Q Did you end up using those one or
15 two institutional brokers as part of the
16 Danish trading?

17 A I don't recall.

18 Q Okay. Had you been familiar with
19 FGC Securities before dealing with Solo?

20 A No.

21 Q Who introduced FGC Securities as a
22 broker?

23 A Solo.

24 Q Can you turn, please, to Exhibit
25 2143?

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1 reports that Solo asked him "to onboard with
2 three new brokers yesterday," and then he
3 identifies those three.

4 Do you have any understanding why
5 Solo asked to have the plans onboarded with
6 three new brokers?

7 A No.

8 Q Had you ever heard of Bastion
9 Capital, Mako Financial or the TJM
10 Partnership prior to Mr. LaRosa introducing
11 them through this e-mail?

12 A No.

13 Q As far as you understood, was it
14 Solo that introduced those brokers into the
15 mix?

16 A Solo asked Mr. LaRosa to onboard
17 with those three new brokers.

18 Q Okay. Do you know if the plans
19 ever used any of these three brokers in
20 connection with trading of Danish securities?

21 A I think so, yes.

22 Q Okay. Whose job was it on behalf
23 of the plans to decide which broker to go to
24 to seek liquidity for any particular trade?

25 A It's part of the allocation process

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1 that we received from Solo in terms of the
2 liquidity and shares. We'd also be given
3 information as to which of those brokers
4 would source that liquidity or had access to
5 that liquidity.

6 So Solo would provide us a number
7 of shares that they saw in the marketplace or
8 could arrange in the marketplace, and also
9 the identity of the brokers who would be able
10 to handle the trades on behalf of the pension
11 plans.

12 Q So prior to the plans entering into
13 the purchase of the securities, the plan
14 would receive information from Solo about
15 which brokers to reach out to to fill
16 certain, you know, liquidity for any
17 particular stock.

18 Is that right?

19 A Yes.

20 Q If you look at the Michelle plan's
21 purchase of TDC shares in August of 2012, did
22 the various plans that were set up in 2012
23 trade in other Danish stocks in 2012?

24 A Yes.

25 Q And did the trades follow the same

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
5)
6 CUSTOMS AND TAX ADMINISTRATION OF)
7 THE KINGDOM OF DENMARK)
8 (SKATTEFORVALTNINGEN) TAX REFUND)
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18 C O N F I D E N T I A L

19 SUBJECT TO THE PROTECTIVE ORDER

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21

22 CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER

23 ORAL EXAMINATION OF

24 RICHARD MARKOWITZ

25 VOLUME 11

REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 RICHARD MARKOWITZ,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:

4 CONTINUED EXAMINATION BY MR. WEINSTEIN:
5

6 Q Mr. Markowitz, if you can turn to
7 Exhibit 2133, please?

8 Did each of the partnerships listed
9 in this exhibit earn profits from the Danish
10 dividend arbitrage strategy?

11 A (Witness reviewing.)

12 MR. BONGIORNO: Objection.

13 A I don't recall.

14 Q Did the partnerships earn profits
15 from any other investing activity other than
16 the Danish dividend arbitrage strategy?

17 A Yes.

18 Q What other investment strategies
19 did these partnerships earn money from?

20 A Dividend arbitrage investments.

21 Q So their profits were generated
22 entirely by dividend arbitrage strategies?

23 A Yes.

24 Q Did those strategies involve
25 Denmark and Belgium?

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1 Q Was anyone else a participant in
2 that plan?

3 A My wife.

4 Q What prompted you to open a
5 custodial account with Indigo for the Routt
6 Capital plan?

7 A The opportunity was offered to me
8 by my former -- by my then to be former
9 partners, Mr. Stein and Mr. Lhote. And it
10 was at a time when there was a business
11 dispute between ourselves and potentially
12 Solo Capital.

13 Q What was that business dispute?

14 A My partners, Mr. Stein and
15 Mr. Lhote, informed me and Mr. Van
16 Merkensteijn in late 2013 or early 2014 that
17 they no longer wanted to work with us as a
18 group or on group investments and projects,
19 and that they had made an investment in a
20 bank in Europe, and that that bank would
21 become a custodian for, among other things,
22 dividend arbitrage strategies, and that they
23 had worked with former Solo employees to
24 establish that platform.

25 Q Was that North Channel Bank?

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1 money from earlier trading in 2015, they've
2 been dormant, as far as investing goes, since
3 2014?

4 A Yes.

5 Q Was -- did you and Mr. Van
6 Merkenstein intend to continue with the
7 dividend arbitrage strategy without the
8 involvement of your former Argre partners?

9 A Our -- my preference, I can't speak
10 for Mr. Van Merkenstein, my preference would
11 have been to continue the
12 relationship -- professional relationship we
13 had established with Solo Capital and
14 continue to have investment vehicles invest
15 in that strategy or others with Solo Capital
16 acting as a custodian.

17 That would have been my -- that was
18 my preference.

19 Q Was that done?

20 A Yes.

21 Q What vehicles were used to pursue
22 that strategy of dividend arbitrage using
23 Solo Capital?

24 MR. BONGIORNO: Objection.

25 A Can you repeat the question,

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1 please?

2 Q Yeah. What vehicles were used to
3 pursue that strategy with Solo Capital?

4 A U.S. pension plans.

5 Q Were those new pension plans or the
6 ones you had been using with Argre?

7 MR. BONGIORNO: Objection.

8 A Primarily new plans.

9 Q Can you turn to Exhibit
10 Number 2265?

11 MR. WEINSTEIN: Mark this as 2265.

12 (Whereupon the above mentioned was
13 marked for Identification.)

14 Q That's in the second day's binder.

15 Okay.

16 If you turn to the last page of
17 that e-mail chain, it starts with an e-mail
18 from Peter Wells to you and Mr. Van
19 Merkensteijn.

20 He says, "I wanted to follow up
21 with you both on the status of the additional
22 information regarding the new ex-dividend
23 trades. As you -- we recall, you were going
24 to provide us with, among other things, a
25 list of who is going to be involved in the

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1 can establish pension plans to participate in
2 the dividend arbitrage strategy?

3 A No.

4 Q Okay. So you had thoughts that you
5 would do business using the LLCs.

6 Right?

7 A That is certainly one function of
8 those LLCs.

9 Q Okay. And how many LLCs were you
10 intending to have set up?

11 A At the time, in discussions with
12 Solo Capital about market liquidity and
13 capacity, and to spread that liquidity in our
14 allocation among our allocation of the market
15 liquidity among clients, I think we were
16 intending somewhere between 30 and 40 pension
17 plans would be established.

18 Q Okay. But the number of pension
19 plans and LLCs that would be set up were
20 based on what Sanjay Shah and Solo told you
21 would be a market allocation for the dividend
22 arbitrage strategy?

23 A No. The overall allocation would
24 be indicated to us or forecasted. It was up
25 to us to decide if we wanted to spread that

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1 obligations that we discussed yesterday, that
2 allocation from the market liquidity and
3 market capacity, we could have put into one
4 entity, but that probably would have required
5 certain reporting requirements. We could
6 have put it into ten entities.

7 I think we decided and discussed
8 that it was appropriate to put it into
9 somewhere between 30 and 40 entities and
10 spread the market capacity that we were being
11 afforded into that number.

12 Q Okay. So your decision to open up
13 30 to 40 new LLCs and pension plans was
14 driven by how you thought you would disperse
15 the allocation provided by Solo Capital?

16 A Yes. And also, since -- as we've
17 discussed with the partnership
18 structure -- it involves us working with
19 friends and family.

20 This was an attractive investment
21 opportunity that we had been working on for
22 six years now, learning, studying, working
23 with lawyers, and getting comfortable that
24 everything complied with all legal standards
25 and tax requirements.

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1 We wanted to include friends and
2 family as an opportunity to earn some
3 retirement income through pension plan
4 investing.

5 Q During this period of time when you
6 were establishing new LLCs and pension plans,
7 did you discuss with Mr. Shah what you could
8 expect to earn from the dividend arbitrage
9 strategy using these new set of plans?

10 A I don't recall any such
11 conversations.

12 Q All right. Did he provide you any
13 figures that you could expect to earn on a
14 per plan basis? Like a million dollars, for
15 example?

16 A Any figures I would have had would
17 have been based on our experience from
18 previous trading. But I don't recall
19 Mr. Shah saying, one way or the other, one
20 million, a half million, 10 million.

21 I don't recall any such
22 conversations.

23 Q Okay. If you turn to the first
24 page of the document --

25 MR. BONGIORNO: Marc, it's -- when

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1 opportunity to two additional individuals.

2 Q Okay. And those are Ms. Jones and
3 Mr. Herman?

4 A Yes.

5 Q Okay. And they are related to you?

6 MR. BONGIORNO: Objection.

7 A Yes.

8 Q So after Mr. -- after Solo Capital
9 informed you that there was additional
10 capacity for the trading, LLCs and pension
11 plans were set up for Ms. Jones and
12 Mr. Herman?

13 A Yes.

14 Q And did they each have three LLCs
15 and pension plans set up?

16 A Yes.

17 Q Okay. So, ultimately, there was a
18 group of 40 plans that were trading using
19 this strategy.

20 Is that right?

21 A Yes.

22 Q Were -- three of the new plans that
23 were set up were set up on your behalf.

24 Is that right?

25 A Yes.

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1 that role?

2 A I don't recall.

3 Q Well, did Mr. Ben-Jacob -- well,
4 withdrawn.

5 Did Kaye Scholer assist with the
6 establishment of the new LLCs and pension
7 plans?

8 A Yes.

9 Q Okay. And was that true for all 40
10 of the new LLCs and pension plans?

11 A No.

12 Q And not all of them were new.

13 Is that correct?

14 A Yes.

15 Q Okay. So, of the 40 LLCs and
16 pension plans, for those that were newly
17 established in 2014, did Kaye Scholer assist
18 in establishing them?

19 A Yes.

20 Q Was it your understanding that each
21 of the plan participants for those new
22 pension plans signed a similar limited power
23 of attorney granting Mr. Ben-Jacob the power
24 to do the same things?

25 A I don't recall.

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1 Q It would be at the front of a book.

2 I don't know which book.

3 MR. BONGIORNO: I think it's the
4 first book. Yeah. It's Day 1,
5 Volume 1.

6 Q So this is an e-mail from
7 Mr. Klugman to a number of people, including
8 you. "Arbitrage Instructions and Questions."

9 Who are -- who is Matthew Cooper?

10 A An individual introduced to me by
11 Robert Klugman.

12 Q What role, if any, did Mr. Cooper
13 have in connection with the dividend
14 arbitrage strategy?

15 A He assisted the pension plans in
16 executing trades.

17 Q And who is Ira Reibeisen?

18 A An individual introduced to me by
19 Robert Klugman.

20 Q Did he have the same role as
21 Mr. Cooper?

22 A Yes.

23 Q Do you recall being part of any
24 discussions about trading instructions for
25 this dividend arbitrage trading?

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1 A I just remember this e-mail. I
2 don't recall being on a -- having a
3 conversation about arbitrage instructions.

4 Q Okay. And is the attachment to the
5 e-mail meant to provide guidance for how
6 Mr. Cooper and Mr. Reibeisen would do the
7 trading for the pension plans?

8 A How they would execute trading
9 instructions on behalf of the plans, yes.

10 Q Okay. At the bottom of Page 1,
11 there are three questions that Mr. Cooper
12 raises. And the second one is, "How do we
13 reach POGO?"

14 Do you know who POGO is?

15 A Yes.

16 Q Who is that?

17 A An employee of Solo Capital.

18 Q Do you know his name?

19 A I believe it's Mark Anderson,
20 something like that. I don't have an exact
21 recollection.

22 Q Okay. Does Mark Paterson ring a
23 bell?

24 A Yes.

25 Q Okay.

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1 question.

2 Q When — did Solo allocate an
3 aggregate number of shares in a particular
4 stock for the 34 pension plans combined?

5 A Yes.

6 Q Okay. And from there, who decided
7 how many shares each plan would get?

8 A Solo would provide information for
9 each customer on their custodial or related
10 custodial platform.

11 Q Okay. So if you look at Step
12 Number 2 on that page, after Cooper or
13 Reibeisen send out the liquidity e-mails,
14 Step 2 is that the broker responds back,
15 saying they will seek that liquidity.

16 Right?

17 A Yes.

18 Q But in fact, everyone knew at the
19 time that the broker had already -- that that
20 liquidity was there, because Solo had
21 determined that.

22 Right?

23 A It was our expectation that the
24 liquidity would be there. We had no
25 assurances or guarantees.

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1 A Yes.

2 Q Who provided that information?

3 A This entire spreadsheet came from
4 Solo.

5 Q All right. So Solo provided the
6 forward counterparties and how much each plan
7 would transact with that forward
8 counterparty?

9 A They provided that identification
10 of the forward counterparties.

11 Q And the amount.

12 Correct?

13 A Yes.

14 Q All right. And then, the stock
15 lender, there would be a stock lending
16 transaction several days after the purchase
17 date.

18 Correct?

19 A Yes.

20 Q And Solo was providing you the name
21 of the stock lender.

22 Right?

23 A Yes.

24 Q And he -- for this particular
25 trade, he was telling you that the Gnosis was

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1 per plan intended so that the group of plans
2 in the aggregate wouldn't meet a certain
3 level?

4 A No.

5 Q Okay. You mentioned that -- the
6 use of a computer algorithm for the trading.

7 Do you remember that?

8 A Yes.

9 Q Okay. Was a computer algorithm
10 being used as of the time of this e-mail?

11 A No.

12 Q Okay. Did the computer algorithm
13 ultimately replace Cooper and Reibeisen?

14 A Yes.

15 Q And so what was the computer
16 algorithm?

17 A It was a software that the plans
18 were able to license that allowed the plans
19 to input certain trading jurisdictions,
20 capacity constraints, interest in shares,
21 dividend paying versus non-dividend paying.

22 After filling out forms, it would
23 assist on an automated basis the placing of
24 orders for both share purchases and hedging
25 and, if needed, stock lending for those plans

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1 on dividend paying shares.

2 Q Okay. And where was this computer
3 algorithm housed? You know, was it yours or
4 was it -- withdrawn.

5 The plan --

6 A The plans licensed it from a third
7 party.

8 Q Okay.

9 MR. BONGIORNO: Let him finish
10 before you jump in.

11 Q And would the computer algorithm
12 itself place the orders that Mr. Cooper and
13 Mr. Reibeisen used to send by e-mail?

14 A I don't know how that computer
15 software worked, but it was able to generate
16 orders and trading information, whether that
17 generated the orders to brokers, or e-mail
18 exchanges with brokers, or that was a
19 secondary computer program within the
20 custodians.

21 But it was a one-source assistance
22 for the plans.

23 Q Who brought this computer algorithm
24 to the plan's attention?

25 A I don't recall if it was Solo

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1 Capital itself or affiliates of Solo Capital.

2 Q Okay. But it was one or the other?

3 It was either Solo Capital or an affiliate of
4 Solo Capital?

5 A Yes.

6 Q So when — before using the
7 computer algorithm, as we see in this
8 exhibit, 1785, Solo Capital would inform the
9 plans which brokers and which counterparties
10 were going to be used.

11 Correct?

12 A Yes.

13 Q How did it work once there was a
14 computer algorithm? Who selected, for
15 example, the stock lending counterparty?

16 A It was part of the software. And I
17 assume, in working with the custodians and
18 counterparties, that it became a part of that
19 software process, but not something that we
20 would be able to look under the hood or see
21 how that software worked.

22 Q So the pension plans didn't need to
23 reach out to the stock lending counterparties
24 once the computer algorithm was in place?

25 A No.

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1 Q Okay. Same with the forward
2 counterparties?

3 A The pension plans continued to
4 reach out to brokers, forward counterparties,
5 stock lenders. But the information that was
6 required to be put into an e-mail was
7 populated by and through the software
8 program.

9 Q So if you put in information saying
10 you wanted to do a stock lending transaction,
11 would you identify the stock lender or stock
12 lending counterparty that you wanted to
13 transact with, or would the computer figure
14 that out?

15 MR. BONGIORNO: Objection.

16 A My understanding is that -- and you
17 asked a very astute question -- the software
18 replaced the human traders. So if, as you
19 show in this exhibit, information came from
20 Solo because they arranged parties, sourced
21 liquidity, and were important in working with
22 the other counterparties, the software
23 program would take similar information, to
24 the extent it had it from Solo, and was able
25 to eliminate the need for the human person to

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1 digest that information and interact with an
2 e-mail server.

3 Q Okay. Can you turn, please, to
4 Exhibit 2212?

5 MR. WEINSTEIN: Mark this as 2212.

6 (Whereupon the above mentioned was
7 marked for Identification.)

8 A I didn't hear that.

9 MR. BONGIORNO: It's 2212. It's in
10 Day 1, Volume 2.

11 Q So 2212 is a trading diagram with
12 Solo Capital in the middle.

13 Have you ever seen this before?

14 A No.

15 Q Okay. In the diagram on the right
16 side, there's a circle for "U.S. Pension Fund
17 or Malaysian Trading Company."

18 Do you see that?

19 A Yes.

20 Q And on the left side, there's a
21 circle for "BVI/Cayman Trading Company?"

22 A Yes.

23 Q Okay. And according to this
24 diagram, the U.S. pension fund or Malaysian
25 company buys stock through a broker, which

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1 A We received advice that explained
2 the issues surrounding that related to a
3 different jurisdiction in Denmark, and that
4 it created additional tax risk for the
5 pension plans.

6 Q Okay. Can you turn, please, to
7 Exhibit 1829?

8 MR. BONGIORNO: Day 1, Volume 1.

9 Q This e-mail from you is about
10 Danish reclaim payments received from Syntax.
11 Is that right?

12 A Yes.

13 Q And you say in the e-mail that "the
14 amounts on the spreadsheet were sent to each
15 plan's respective custodian, and then
16 75 percent of the gross reclaim was paid out
17 to Ganymede."

18 And in 2015, why was 75 percent of
19 the gross reclaim paid out to Ganymede?

20 A In late 2014, after the partners of
21 Argre decided not to work together, we
22 weren't sure we would be able to continue
23 doing business with Solo Capital or its
24 related entities.

25 And as I mentioned, two of my

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1 former partners, Mr. Stein and Mr. Lhote, had
2 decided to go off and do business on their
3 own. And they had acquired North Channel
4 Bank, got authorizations to have it act as a
5 custodian, had decided to work with former
6 employees of Solo, and were going to be
7 effectively competing in this dividend
8 arbitrage marketplace.

9 So with respect to Solo Capital,
10 where Mr. Van Merkensteijn and myself, and
11 ultimately Mr. Klugman, preferred to continue
12 our relationship and client business, we had
13 discussions that initially were tense because
14 Mr. Shah thought that Mr. Van Merkensteijn
15 and myself were investors in the bank, aware
16 of the developments, were going to be
17 competing.

18 And we assured them that that was
19 farthest from the truth. We had no
20 relationship with that, we're not aware of
21 it, or became aware of it at the time that
22 Argre Management effectively dissolved.

23 And Mr. Shah said that he would
24 consider allowing us to participate as
25 customers and clients with different

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1 entities, those that were no longer
2 affiliated with or related to Mr. Stein
3 and -- Mr. Stein and Mr. Lhote, and the
4 economics would most likely change because
5 there would be additional competitors in the
6 marketplace, North Channel Bank, the ability
7 to get liquidity in shares would be impacted,
8 and that we would be -- the pension plans
9 would be receiving a lower percentage based
10 on the market pricing and the fees paid to
11 the other counterparties.

12 And that became 66 percent to
13 75 percent that would be paid away by the
14 pension plans because of this market
15 development, and perhaps Mr. Shah being upset
16 and associating Mr. Van Merkenstein and
17 myself with the actions of my former
18 partners.

19 Q So, in this particular case, adding
20 competitors into the market actually drove up
21 the fee as opposed to the additional
22 competitors usually driving a fee down?

23 A No. Additional competitors in the
24 marketplace drive up the cost of borrowing
25 shares if it's a stock lending transaction,